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September 17, 1997

Honorable Members
State Board of Psychological Examiners
P.O. Box 45017
Newark, NJ 07101

FILED WITH THE BOARD OF PSYCHOLOGICAL EXAMINERS ON September 17, 1997

re: Matter of Nieves and Blasucci
OAL Docket No. BDS 2394-96
EXCEPTIONS

Honorable Members of the Board:

Enclosed are Exceptions filed by Complainant Attorney General to the Initial Decision of the Hon. Jeff S. Masin, A.L.J.

In addition to consideration of the Exceptions, Complainant requests that the Board note that the Initial Decision contains a few errors which could engender confusion if uncorrected, but which the context and remaining testimony should disclose are apparently typographical in nature and should be identified.

Complainant respectfully suggests that the errors be found and corrected in the Initial Decision as follows:

1. Page 37, mid-page, reference to CG should be to "her", not him. This client was female.
2. Page 40, mid-page, reference to KiJ should be "her", not him.
3. Page 73, near bottom, should be "Keep it quiet", not "keep it quite."
4. Page 76, 2nd par. from bottom, should say Karen Geller, not Angela Heller.
5. Page 99, 1st par. should say Angela Heller, not Andrea.
6. Page 128, mid-page, should say Heller, not Geller.

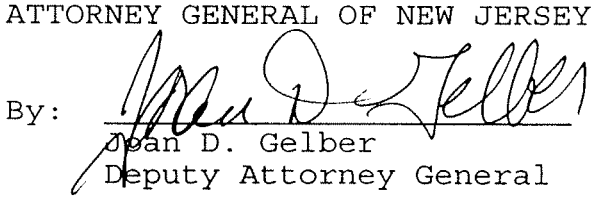
A copy of the Exceptions and of this error-correction request is being sent this date to Judge Masin and to defense counsel Steven Blader, Esq.

NOTE

We are advised that the Board shall conduct final review of this matter on October 27, 1997. Oral argument is requested.

Respectfully submitted,

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: 
Joan D. Gelber
Deputy Attorney General

Enclosure: Exceptions
c: Hon. Jeff S. Masin, A.L.J.
Steven Blader, Esq.

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124 Halsey St., 6th floor
P.O.Box 45017
Newark, NJ 07101

re: Matter of Nieves, Psy.D. and Blasucci, Psy.D.
OAL Docket BDSPE 02394-96S
EXCEPTIONS TO INITIAL DECISION

Honorable Members of the Board:

The Hon. Jeff S. Masin, A.L.J., in his Initial Decision (hereinafter "ID"*) announced July 23, 1997, has made recommended findings of fact and conclusions of law demonstrating serious misconduct by both respondents Dr. Nieves and Dr. Blasucci in their two primary money-making enterprises: their private for-profit practice "Contemporary Psychology Institute" [emphasis added] ("CPI") and the State DYFS-funded program "Therapeutic Alternatives" (T-A). Respondents conducted T-A by employing their own permit-holders and a social worker. Complainant presented 12 witnesses, including 7 clinicians and 3 office workers who had resigned because of discomfiture with the unethical conduct of both respondents in T-A or at CPI or both. T-A's contract with DYFS for Fiscal Year 1994 at sites in 3 counties was in excess of $1 million.

In briefest summary, the ALJ found that in the T-A program of which respondents were the Co-Executive Directors, both respondents failed to give sufficient training and supervision to the staff; failed to refund T-A salary monies to DYFS for a resigned employee

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*References herein to the Initial Decision will be "ID_(page). References to the trial transcript will be, for example, 1T3 meaning day 1 of trial, page 3. See attached separate list of dates and persons testifying, Attachment A.

(Dr. Lyga); and hired Dr. Nieves' daughter Kim Nieves without proper notice of the conflict of interest (portions of Count 1). Respondents failed to properly monitor the T-A program and, in their private CPI practice they improperly kept 50% of income brought in by their permit-holders (portions of Count 2). Respondents also failed to protect confidentiality of data in psychological tests of job applicants (portion of Count 3).

Additional violations found regarding Dr. Blasucci were his sexual relationship with a female patient Mrs. E.S.; his excessive and regular profanity in the work environment; and his inappropriate use of alcohol in the workplace (portions of Count 4). He was also found liable for his sexual harassment of female staff clinician Angela Heller and his harassment/abuse of female staff Jacqueline Gulla Decker and Victoria Mason; his demand that Mason assist him in sexual liaisons with another female employee (Ms. Morfino); and his failure to file timely supervisory reports for permit-holder Dr. Jared Bush (portions of Count 3).

Dr. Nieves was separately cited for unethical handling of competition with his own permit-holders (Dr. Jeff Allen and Dr. Frieda Rosner) for a State contract at the Ewing Residential Treatment Center (ERTC); his improper manner of terminating supervision of Drs. Allen and Rosner; and his retaliation against another permit-holder Dr. Karen Geller (portions of Count 3). The ALJ found respondents not credible on certain issues: Dr. Blasucci in regard to sex, alcohol and profanity issues, and Dr. Nieves' testimony with regard to other matters including the retaliation charge involving Dr. Geller (ID 148) and the events of the "Philadelphia incident" of sexual harassment of Ms Heller by Dr. Blasucci (ID 136-138); Count 3).

The ALJ's findings of fact and conclusions of law on each of the above recommendations should be affirmed by the Board, as thoroughly supported by the testimony and documentary evidence. On those charges, the ALJ plainly considered the proofs as a whole, and the Board should give due regard to the opportunity of the one

who heard the witnesses to judge their credibility; Mayflower Securities v. Bureau of Securities, 64 N.J. 85,92-93 (1973).

Complainant Attorney General has determined not to file Exceptions with regard to the ALJ's recommended dismissal of portions of Count 1 dealing with respondents' management decisions within the DYFS T-A program. Exceptions shall also not be taken to portions of Count 3 regarding alleged misrepresentations to permit-holders of terms and conditions of employment; alleged misuse of psychological tests; and alleged demands to covertly obtain confidential information from competitors. However, Complainant does file Exceptions to twelve recommended dismissals, below.

POINT I

THE BOARD IS AUTHORIZED TO, AND SHOULD, REJECT CERTAIN OF THE ALJ'S RECOMMENDED FINDINGS OF ACT AND CONCLUSIONS OF LAW, REGARDING RESPONDENTS' FAILURE TO PROVIDE CONTRACTUALLY REQUIRED TIME TO DYFS; THEIR SUBMISSION OF FABRICATED/INFLATED SERVICE HOURS TO DYFS; DIVERSION/MISUSE OF DYFS-FUNDED PREMISES; FABRICATION OF TREATMENT REPORTS TO DYFS; DISGUISED KICKBACKS; CPI CASH PAYMENT DECEPTION; CPI INSURANCE FRAUD; REIMBURSEMENT DENIED TO DR. BUSH; RETALIATION AGAINST DRS. BUSH, ROSNER AND ALLEN; EXPLOITATION OF PERMIT-HOLDERS; AND CONFLICT OF INTEREST UNDISCLOSED TO DYFS.

Complainant asks the Board to reject the ALJ's proposed findings on certain charges itemized in 12 sections below, all dealing with honesty and integrity issues. The ALJ has summarized the pertinent testimony in the record on most of the issues, and Complainant asks the Board to draw different conclusions from those facts. It is critical to note that the ALJ made no adverse findings on credibility of any of Complainant's witnesses. His recommendation to dismiss the allegations to which Complainant takes exception was apparently based upon his willingness to find respondents' explanation of the conduct to be professionally plausible. Thus, there is no legal obstacle to the Board appropriately exercising its professional expertise, as authorized by the Administrative Procedure Act, to evaluate on its own the significance of the same testimony and documents relied upon by the

ALJ.* "The experience, technical competence, and specialized knowledge of the agency...may be utilized in the evaluation of the evidence, provided this is disclosed of record"; N.J.S.A. 52:14B-10(b). It is thus legally proper for a professional board to overrule the hearing examiner's findings and to substitute its own as long as the board carefully and sensibly considers the report below and evaluates the evidence in light of its expertise, an expertise which is not possessed by the hearing examiner, and demonstrates appropriate grounds for refusing to accept those findings in areas which affect the final result; Matter of Silberman, 169 N.J.Super. 169 (App.Div. 1979), aff'd 84 N.J. 303. The ALJ's recommended dismissals of allegations should be rejected and reversed as to the itemized matters, and violations should be found proved as to both respondents as to the following:

(1) FAILURE BY BOTH RESPONDENTS TO PROVIDE THE MINIMUM REQUIRED TIME UNDER THE DYFS CONTRACTS TO THE MT. HOLLY T-A AND TO THE ERTC SITE.

Witness Philip Frigerio, Supervising Contract Administrator for DYFS, identified C-124, -125, 126 and 127 EV as the annual contracts between T-A and DYFS for 1990-1994, in which respondents themselves designated a minimum of 16 hours each to be provided to the Mt. Holly T-A site and a minimum of 8 hours each for the ERTC site (8T14,32,34 and *passim*; ID 11). All of Complainant's clinician witnesses who were regularly assigned to the Mt. Holly site during lengthy and overlapping parts of these years testified that neither respondent was present at the Mt. Holly T-A for anywhere near the specified time.** Dr. Miller (employed by CPI at its Skillman office) was asked to "cover" at T-A for several weeks; she rarely

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*Unlike Clowes v. Terminix Intern., Inc., 109 N.J. 575 (1988), where the agency was criticized for improperly rejecting ALJ credibility assessments, in this case ALJ Masin did not identify any of Complainant's witnesses as not credible. By contrast, he did find the testimony of Drs. Nieves and Blasucci not credible on many topics.

**Dr. Wendy Aita, ID 14; Dr. Allen, ID 15; Dr. Geller, ID 16; Dr. Miller, ID 16; Ms Heller, ID 17; Dr. Rosner, ID 17,60.

saw either respondent at the premises. At the ERTC facility where Dr. Rosner and Dr. Miller had primary assignments, respondents were rarely seen (ID 16,17,60). Yet respondents awarded themselves T-A salaries in FY 1994 of 133,900 each (C-128 EV), in addition to income from their busy CPI practice and other remunerated services at Spectrum EAP.

The ALJ recommends a finding that the contracts, while specifying a number of hours to be provided by each respondent to each program, did not clearly require that the time be spent "on site", so that respondents could have done some of the contract work from other locations (ID 118). However, considering that T-A was a "new and unique" program, and respondents were running it entirely through unlicensed young clinicians who, respondents admitted, would have to deal with "scary situations" with children who were "different" (ID 11, 119), the Board should find that an intensive on-site presence for supervision by both respondents was essential. Instead, witnesses such as Ms. Heller and Dr. Geller testified that when T-A was particularly short-staffed, each begged respondents to assist her in handling the on-call schedule. They declined to do so (ID 16,17).

Further support for the finding of liability on the charge of nonperformance of promised time commitment is that the ALJ *did* find "careless and negligent recordkeeping leading to the possibility that funds would be paid without adequate documentary backup to support the amounts" (ID 134). This can constitute professional misconduct. The ALJ conceded that even in a new program, "[a] professional who is the recipient of a State contract is reasonably expected to assure to the best possible extent that the public funds which are paid to the contractor are appropriately due and are accounted for" (ID 134). Several audits identified a lack of proper records and other concerns regarding protection of the funds, and that respondents had a "laissez faire attitude" toward these problems (ID 134-35). "Their conduct in this regard was

unprofessional, negligent and in violation of their professional responsibilities" (ID 135).

It is respectfully urged that the issue should therefore have been analyzed as follows: even if the contract were interpreted loosely to require 16 hours/week for the Mt. Holly site and 8 hours/week for the ERTC site to be provided by each respondent irrespective of where the "service" was actually provided, the factual testimony of their scant appearance at either site coupled with the testimony of deliberate fabrication of hours (see Item 2 below) plus their extensive private practice (C-156,157 EV) and interests at other practice locations, *e.g.*, Spectrum, should lead to a Board finding, by a preponderance of the credible evidence, that they <u>could not</u> have met the minimum contract time no matter how the contract was interpreted. The exact extent of deficiency need not be determined to find deception and misrepresentation, professional misconduct or, at the least, grossly and repeatedly negligent conduct, warranting disciplinary sanction on this portion of Count 1.

(2) <u>SUBMISSION OF FABRICATED AND INFLATED SERVICE HOURS ON THE T-A AND ALSO THE ERTC PROGRAMS.</u>

Complainant alleges that respondents' affirmative misrepresentations of T-A services are a related and exacerbated form of misconduct. Dr. Wendy Aita testified to receiving from Dr. Nieves C-3 EV, a "statistical summary" created by respondents' secretary Tracey Helfrey for submission to DYFS, purporting to list specifically defined service hours during 1991, T-A's first full contract year (1T243-245), despite an admitted lack of supporting records. Dr. Aita testified that "there is no way possible that this could have ever really occurred" (1T245). She analyzed the claims asserted as to four of her own clients, for whom respondents asserted 764 service hours within four months, or 44 hours/week for these children alone. Yet Dr. Aita pointed out that her time was used for three other children as well, in addition to other tasks, and she noted how inflated were respondents' figures

for each child. She was aware that "there was no care taken to make sure they were accurate" and knew respondents had grossly overinflated the hours (1T246,247). Clinician Ms. Heller testified to the same effect: based on review of the data purportedly for her own assigned children and from her own experiences, the service hours were falsely inflated (7T24,25).

With regard to the TA and ERTC contracts, in addition to the testimony by each of the clinicians above regarding respondents' very limited presence at the facility, CPI's own billing staff/office manager Ms. Mason testified that Nieves and Blasucci told her to look through their office schedules and to deliberately ascribe any gaps to the DYFS contracts without any basis therefor (6T5 through 7; ID 25), *i.e.*, any time not explicitly scheduled for another matter. This testimony was not denied by respondents; Dr. Nieves admitted that clinicians had not kept accurate records and that respondents did not have an accurate tracking system (ID 27 and 11T164).

Yet although Dr. Nieves admitted they had no time records for when or how respondents provided time to the programs, and the ALJ found "ample evidence" that neither respondent was at the program site for the contractually required hours, the ALJ recommended dismissal of these charges on the ground that the required hours did not need to be provided at the program sites (ID 117-118). That recommended finding should be deemed unduly generous to respondents in the circumstances and adverse to the need for integrity in the profession. Indeed, every audit report confirmed and criticized the deficiency in accountability; C-129 through C-135 EV. The Board should find that respondents manifested blatant dishonesty at the outset and throughout the DYFS contract by encouraging and knowingly submitting false and/or unsupportable data for the patent purpose of making their program look good, to encourage a renewal of contract. The Board should find not only inadequate recordkeeping, but also that respondents' representations to DYFS, in the promotional brochure, were deliberately fabricated,

misleading and deceptive, for the purpose of obtaining renewal of their first contract and at a higher fee; this demonstrates failure of good moral character.

(3) DIVERSION AND MISUSE OF DYFS-FUNDED PREMISES FOR PRIVATE PRACTICE.

The ALJ would dismiss these allegations from Count 1 of the Complaint. Yet the factual predicates were supported by Dr. Wendy Aita, Dr. Derek Aita, Dr. Miller and Ms. Heller and were not denied by respondents. Witnesses were told to develop their private practices and also a "private T-A" program, and respondents gave them CPI-office name business cards using the T-A site address for which there was no disclosure and no rent being paid to DYFS (ID 71,72 and see C-69 and -100 EV). Dr. Nieves' criticized CPI clinician Dr. Miller for seeing patients at the T-A site only because she once unwittingly did this when a DYFS representative was present at an incidental meeting in the T-A office* (ID 73). In addition, CPI-TA clinician Dr. Bush testified that Dr. Blasucci told him to "keep it [the private practice] quiet" "because the location where I was to be practicing was a DYFS funded location" (4T85).** DYFS contract supervisor Mr. Frigerio and liaison Mr. Fierick both testified that this private use would not have been permitted if DYFS had known (ID 73,74; 8T134-135; 14T65). Clinician Dr. Wendy Aita testified (without contradiction) that the then T-A bookkeeper Diane Carlson had confirmed that CPI was not paying rent for its private use of the premises (ID 72; 2T225). The ALJ apparently found the testimony credible (ID 132) but would dismiss the charges because the clinicians' private use was brief and

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*Dr. Miller testified that she had been given to understand that she would conduct the private CPI practice out of that office. After the incident, Dr. Nieves told her that she "was not to see clients when DYFS personnel were there" (6T62).

**The Initial Decision at ID 73 reports this testimony, but contains a plain typographical error in its quotation: "Keep this quite"[sic]. This has been called to the attention of the ALJ.

"limited" (ID 133). The ALJ also suggested that there was a lack of "clear misrepresentation or deceptions" by respondents (ID 133). The ALJ fails to see the overriding pattern shown by the testimony of both clinicians: this was another manifestation of the greed and exploitation taken at every opportunity to secretly make money at the expense of others. Respondents' covert use of the DYFS-funded premises was inexcusable, even if aborted, especially because it was not respondents who stopped it. The practice was stopped by the permitholders themselves who realized the ethical problems and declined to participate (ID 72). The Board should find deception and professional misconduct.

(4) FABRICATION OF TREATMENT SUMMARY BOOKS FOR SUBMISSION TO DYFS.

The ALJ would dismiss this charge in Count 1. He found that DYFS did not actually "require" such "books" summarizing T-A treatment of a DYFS client (which is true) and that although there were gaps in the necessary underlying records, he is not convinced that respondents intended the clinicians to "make up" material. But in legally significant admissions against their own interest, clinicians Aita and Heller testified to being directed by Dr. Nieves to create detailed "books" of individual patient cases, although Nieves was well aware that basic underlying data was in fact missing due to poor management at T-A (ID 27,121 and see above regarding lack of tracking of services). Ms. Heller testified that Dr. Nieves told her the books were "to impress DYFS" (7T19). Heller said that for the book on boy K.R., there were no notes in the file for the period before she started working with him and she therefore fabricated notes of treatment for that period (7T129-130). She interviewed some persons and then "I made it up, what was going on, and I just kind of put filler in" (7T130). For example, she made up the critical sections dealing with how the child was evaluated, how the family reacted, and what was happening with the child. She said some was based on reliable source hearsay, but some was not (7T132,218). She said she arbitrarily selected calendar

dates for purported contacts with K.R. because Dr. Nieves wanted it to appear that the boy had frequent contact with T-A. She said Dr. Nieves edited the document "frequently" and wanted it to be "very clinical and very positive" to present the appearance that T-A worked closely with the family and had no responsibility for anything that went wrong. As Ms. Heller testified, that was not true. She was particularly concerned about the statistical summary section: "I made up those numbers...I was asked to make them up ...[by] Dr. Nieves" (7T133-134).

Ms. Heller testified that she had to make up even more data for the book for Dr. Blasucci's client R.G., because Blasucci had made no notes in the record (7T139). Heller said she arbitrarily made up notes and ascribed some to months in which there were no chart notes at all, including weekly intervention strategies and the child's status at school and at home. Here again, secretary Tracey Helfrey had "totally fabricated" hours of service in the statistical summary (7T134, 136-137, 139-143). Heller testified, "I know that Dr. Nieves knew, and I know that Dr. Blasucci did too....He had said he did not want to talk to me about it" (7T140) Ms. Heller testified that despite her discomfiture she complied with these demands for the books for clients K.R. and R.G., actually making up session dates and case notes which Dr. Nieves approved and submitted to DYFS (7T139-141; ID 28,29, 122).*

Dr. Aita testified that she had been told to prepare the "book" for K.J., which Dr. Nieves demanded even after Aita's resignation. Dr. Aita did begin the K.J. book, but found that the T-A folder contained inadequate information for that purpose. She testified she was told to go through the T-A meeting minutes and

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*The ALJ omitted discussion of Ms. Heller's testimony regarding the book of T-A client H.B. See R-11 EV. When shown this book by defense counsel in the midst of trial, Heller indicated her astonishment at seeing that the book bore Heller's name on the cover as author. Yet she was able to identify only a few documents in this "book," as she had had only limited involvement with the client and had not prepared this "book" (7T166 to 170,172,187).

see what she could glean from those scanty entries (2T218). But even that did not help, because notes for whole months were not in the folder (2T219). When she was told to "make it up" (2T112), she refused to complete it. She wrote a letter to respondents, saying: "Prior to my involvement with 2 cases, there are few notes and I cannot write a book without proper information. Two, the units were not kept correctly for the first year and a half of the program and writing a chapter on how many visits were given and why is an exercise in conjecture, creativity and fabrication, all of which I find unethical. To finish these would mean that I would have to lie and I can't do that"; see C-11 EV (2T268; 2T113-114). The ALJ noted that Dr. Aita refused to continue with the book because she believed that such conduct was unethical (ID 28,122). Dr. Aita identified the "book" cover for client K.J. (excerpt C-8 EV), and noted that respondents had placed Dr. Aita's name on the book, although she in fact had not prepared it and was not at T-A when it was completed.

The explanation proffered by Dr. Nieves at the hearing, which the ALJ accepted as professionally reasonable - was that the clinicians were expected merely to gather such information as was reasonably available at the time (ID 121-122). But this was <u>not</u> the one articulated to the permit-holder by Dr. Nieves, whose entire answer to Dr. Aita's ethical concerns was a letter deriding her (2T115; ID 28).

Complainant is not required to prove "damages" or "reliance" by a third party on the misrepresentations or other unethical conduct of a Board licensee; jurisdiction lies with the Board to discipline a licensee for the improper act itself. The Uniform Enforcement Act is intended to be remedial and is to be construed liberally in the *public* interest, <u>N.J.S.A.</u> 45:1-14 and -21(b). The Board should find both respondents liable for directing or condoning direction to their staff to create documents intended for DYFS to enhance respondents' financial and professional interests by promoting the T-A image, when respondents knew or should have

known that the detailed data which they demanded to be included was largely non-existent and they encouraged their staff to make it up.

(5) DISGUISED KICKBACKS FROM ERTC SALARIES.

Respondents (TA) explicitly listed a DYFS contract line item for their own salaries, including supervision of employees, plus several $30,000/year payments to subcontracting psychologists at the ERTC site. Respondents, in their contract submission, did not disclose that they were actually paying those psychologists only $20,000. See Decker testimony describing in detail the additional 1/3 respondents (secretly) acquired by paying CPI's subcontracted psychologists at ERTC only 2/3 of line item salaries to which respondents attested in their budgets submitted to DYFS, while keeping the rest (5T46-47).C-128 EV (ID 130). When CPI permit-holder Dr. Karen Miller, who was directed by respondents to work at ERTC, chanced upon this misrepresentation and confronted Dr. Blasucci, he announced that the 1/3 balance was for "supervision" (6T67) - for which he was already being paid under his own line item as Co-Director;(ID 59). The ALJ would find that the making of a profit on the contract on these employee salaries was not illegal and does not rise to a level warranting Board discipline (ID 130), although the ALJ conceded that a clear disclosure in respondents' budget documents would have been more satisfactory and DYFS could have better monitored these matters (ID 130). The ALJ suggested that respondents' conduct does not rise to a level warranting Board discipline.

However, DYFS contract supervisor Mr. Frigerio did not agree with that assessment. Confirming the concerns identified in his letter C-136 EV addressing some of respondents' financial improprieties, Mr. Frigerio testified that respondents' cost presentation for the psychological consultants in the T-A's ERTC Budget proposal claims a direct cost charge or compensation to named psychologists and does not identify that the cost includes a component for program supervision or oversight (8T75,92,98-

99,101,114,116-118). Mr. Frigerio testified that if there were administrative costs (separate from those for which respondents were already being paid as Co-Directors and under other line items), this should have been identified in the General and Administrative Column of the Consultant Budget Category in the Annex B Budget form (ID 62,63). Since it was not so identified, T-A was representing that the line items are direct compensation or reimbursement to the named consultants. Respondents' actions thus resulted in DYFS unwittingly reimbursing them in excess of the actual consultant costs, which the Division would find "imprudent and unacceptable." Mr. Frigerio testified that the Provider Agency (T-A) was "in no way absolved from the requirement to fairly and accurately present its allocation of costs in the Budget"; C-136 EV. This form of misconduct was directly related to the violation which the ALJ did find: Dr. Nieves' refusal to reimburse DYFS for the T-A check improperly issued - through no fault of Dr. Marilyn Lyga - to Dr. Lyga who had previously resigned. Bookkeeper Ms Decker testified that Dr. Nieves refused to return it because then he would not be able to keep the 1/3 profit (origin disclosed above) for her subcontracted services to ERTC (ID 57; 5T52).

Mr. Frigerio identified many of the audit reports which T-A commissioned and submitted to DYFS. Frigerio also identified special audits belatedly ordered by DYFS itself from independent auditor KPMG, C-134 EV and C-135 EV. The results of the special audits clearly disclose KPMG's conclusion that respondents had not maintained adequate records to support their claimed costs in several Budget categories, approximating 28% ($375,439) of the fund ceiling (8T77; ID 56).

The Board should therefore find that sufficient credible evidence has been presented to find both Drs. Nieves and Blasucci liable for excessive and deceptive billing (and if for "supervision", then double billing); they made explicit misrepresentations to a State agency of those line-item expenses,

again showing poor moral character and demonstrating consistency in their pattern of sharp dealing without proper disclosure.

(6) DECEPTION REGARDING CASH PAYMENTS AT THE CPI OFFICE.

The ALJ would dismiss these charges of financial deceit in Count 2 on the ground that Complainant produced no evidence that the accountants for CPI were deprived of proper information to assess CPI's tax and financial positions or that cash income was not reported (ID 135). The ALJ apparently relied upon Dr. Nieves' testimony that the financial documents (described by Decker, see below) were turned over to the accountant, and that there was a "Miscellaneous" section on the office worksheets that would show what cash had been received for the week (12T170), but Dr. Nieves did not produce the accountant to confirm receipt of this financial information.

Complainant presented extensive testimony, countering Dr. Nieves' assertions. Complainant's witnesses (a succession of office managers-bookeepers Ms. Rich (see 3T), Ms. Decker (5T), Ms. Mason (6T) and even defense witness Carlson (9T)) testified to the manner in which cash was accumulated and then divided up every week betwee the respondents (ID 54,55). Ms Mason testified to direction by respondents not to list receipt of cash on copies of receipts to be submitted to insurance carriers; only checks were recorded on payment receipts. The ALJ reported Decker's identification of office financial worksheets, and noted her testimony that she was directed to generate checks for petty cash for $1,000 per month even though only $200 was needed for office purposes, with the rest distributed to respondents (ID 54; and see C-78g EV).

Yet the ALJ unaccountably did not report the rest of the extensive and detailed testimony by Decker, who was assigned to handle the incredibly complex bookkeeping required by respondents' schemes regarding cash receipts in the office. But the transcript of Trial Day 5 contains Ms. Decker's detailed testimony of how the worksheets were prepared. She testified that respondents' initial

orders were to disguise cash receipts as "Other" instead of as patient revenue on these worksheets, and later not to list cash receipt at all. These worksheets were initialed from time to time by respondents confirming their awareness of Decker's efforts to comply with their directions in this scheme. See the actual internal office worksheets C-78d EV through C-78x EV; C-80 EV, C-801 EV, C-81 through 85b EV. Ms Decker even described the difficulty in figuring out how to calculate the 50% payment due to the clinician because of the obfuscation. See Decker testimony at 5T, especially pp.12, 14 to 17, 19 to 21, 23 to 27, 31-32, 41 to 43, 50, 55, 156, and 173.

Ms Decker identified C-78a through -78f EV as having been prepared by co-employee and prior bookkeeper Ms. Morfino, already implementing respondents' demand that cash intake not be identified as such; it was disguised under the column captioned "Other." At first, cash was counted in the section for total revenue received, but later respondents directed Decker not to list cash received under any caption, however spurious, and to record only the receipt of checks (5T125,127). Decker also explained how payments were made to "consultants" (*i.e.*, unlicensed permit-holders working for CPI); these clinicians were to receive only 50% of actual collections from patients they treated. Decker demonstrated by example how the total fee paid by a client of permit-holder Dr. Rosner at a given time was disguised by respondents under the "Other" column because it included cash, and how the 50% fee to be paid to Rosner had to be laboriously reconstructed by the staff. But worksheet C-78h EV shows that by 8/15/92, the Commission section for consultants no longer even reflects the true total from which payment to them was calculated because cash was no longer documented on the worksheet. Decker demonstrated on C-78m EV that the true total of revenue including cash can be derived only by adding in "Other" and then doubling the calculated 50% Commission to the consultants. Indeed, the calculation base became so obscured under respondents' scheme that, as shown on C-78p EV, Decker said she had inadvertently

underpaid Dr. Miller because the total listed consultant income deliberately omitted the cash Miller's patients had actually paid. Decker also testified that respondents allowed deposit only of checks and not cash; for confirmation, see the trial exhibit attachments to C-78p EV showing that although cash had actually been received, no cash was listed on the attached deposit slips 5T125,127).

Decker testified that she had generated the reports solely for respondents' use and delivered them contemporaneously when prepared. Despite Dr. Nieves' claim that they were provided to CPI's accountant, bookkeeper-office manager Decker, who was employed by respondents for 1 3/4 years, testified that she is unaware of any such delivery. Indeed, Decker testified that a few days before she had resigned, Dr. Nieves had handed her his own collection of said reports, telling her that he did not need them and that they were "cluttering" his office; he told her that she could throw them away ((5T9-10,121; ID 54). (Instead of discarding them as instructed, Ms Decker chose to save them and to turn them in to the Attorney General.) Dr. Nieves' casual direction to discard the internal cash flow worksheets clearly allows the inference that respondents did not intend their accountant to receive those documents.

Based upon the cumulative and consistent testimony and the actual internal office worksheets in evidence, the Board should find that sufficient evidence has been produced to show deceptive conduct in secretively pocketing cash receipts and in not identifying cash receipts on office worksheets; this should be found to constitute deception and professional misconduct.

(7) INSURANCE FRAUD AT THE CPI OFFICE.

The ALJ would dismiss this charge in Count 2. However, in addition to the above testimonial and documentary evidence of false recordkeeping, Complainant produced the billing record for patient Mrs. L.I., C-86 EV. That document, which was also coupled with

testimony by Ms. Mason and Ms. Decker, dramatically corroborated respondents' direction to bill the patient's insurance carrier for more than the patient was asked to pay (5T66 to 70; 6T10; ID 52,53). Complainant's witnesses testified to hearing respondents at a CPI staff meeting flippantly confirm their awareness that their billing practice was illegal (5T73-74; 6T12; ID 53). Those witnesses also described another specific case, Ms L.H., C-95 EV, where the large unpaid balance was totally cancelled after a challenge by the client that the billing was fraudulent. The staff recollected other such cases, too, but due to lapse of time were unable to specify case names other than those above (5T145,147; 6T12-13). The ALJ appears to have recognized this evidence of improper conduct, but although the witnesses testified that they had been instructed in this procedure by respondents' prior office manager Carlson, the ALJ dismissed this as not evidence of a "routine direction" or that this was an intentional or widespread procedure; indeed, the ALJ generously suggested that it might have been aberrational or mistaken (ID 136).

The Board should consider Exhibit C-86 EV, plain on its face in showing explicit direction for dishonest billing which cannot be explained as a "mistake", and should find respondents liable based even on this one flagrant file because it shows repeated separate instances of improper billings over an extended course of time. The Board can further deem the testimony of Ms Decker and Ms Mason - that this situation occurred with other cases as well - as more credible than that of either respondent.

(8) REIMBURSEMENT SHOULD BE ORDERED FOR DR. BUSH.

The ALJ would decline to order reimbursement to Dr. Jared Bush for his out-of-pocket expenses of $1,542.23 incurred for purchases made for T-A during his employment, or for his toll call expenses when calling clients at night when he was on call (under Count 1, par. 11). The ALJ said that Bush did not produce these figures when asked to do so after depositions in his civil suit and the ALJ

erroneously said "none was produced in this proceeding" (ID 141). But Bush specifically testified that he had provided them to his attorney (4T128), and he provided copies to the ALJ, admitted as C-70 EV and C-70a EV. There was no contradicting testimony on the legitimacy of Dr. Bush's expenditures on behalf of the T-A office and the children. It appears that the ALJ inadvertently overlooked the Exhibits in evidence. The Board should therefore order that respondents reimburse Dr. Bush in full in the amount specified.

(9) RETALIATION BY DR. NIEVES AGAINST DR. BUSH.

The ALJ would dismiss a charge of retaliation by Dr. Nieves against permit-holder Dr. Bush (Count 3). After Bush had worked for respondents in 1992-1993, respondents gave him a high evaluation plus a $1,000 bonus; C-71 EV. Bush resigned shortly after because of the lack of supervision and support for his T-A work and lack of reimbursement for his expenses. When Bush sought licensure here, the Board learned that no supervisory evaluation form had been sent in by Blasucci/Nieves when their supervision terminated in 1993. In 1995 Nieves sent the Board a scathingly adverse report, urging that Bush be given no licensure credit for the work he did with them; C-74 EV. This evaluation was discovered to be quite inconsistent with the laudatory evaluation they had given Bush in 1993 (4T78-79, 97-102). The ALJ would find that it was only after Bush resigned that respondents "became aware" of his poor performance and they informed the Board only when pressed to do so (ID 97,151). This rationale should be found to be wholly implausible in the circumstances. A mere comparison of respondents' evaluation of Dr. Bush at the time (C-68 EV) with the report (C-71 EV) prepared for the Board two years afterward (by which time the clinicians' 1994 private civil suit had been filed against them; 4T117)) provides ample evidence of deliberate retaliatory motive, especially by Dr. Nieves. See also C-170 EV.

(10) RETALIATION BY DR. NIEVES AGAINST DRS. ROSNER AND ALLEN.

The ALJ would dismiss a charge of retaliation against permit-holders Dr. Allen and Dr. Rosner (Count 3). Directly after their dispute with Dr. Nieves about his takeover of the ERTC contract and proposed 1/3 cut in pay from their former independent contracts at ERTC, Dr. Nieves had sent the Board a letter "immediately" terminating their supervision - without any explanation (ID 58-59,61). While the ALJ does criticize Dr. Nieves for the manner in which he handled the terminations of both Dr. Allen and Dr. Rosner (ID 146,147,150), the ALJ would find no "retaliation" because both had already sought out other supervisors (ID 103,146) (Allen, as to his work at Avenel Diagnostic Center, and Rosner, because she had perceived that Dr. Nieves was providing no professional or educational service to her). But the ALJ seems to have overlooked the critical sequence, *i.e.*, that when Nieves became angered by his permit-holders objections to his competition with them, Nieves could have simply terminated his employment of them. Instead, he "immediately" terminated his supervision role as well. By doing so, he utilized a chokehold on the lawfulness of any other employment they could obtain. Clearly, Dr. Nieves had contracted *with the Board and with Allen and Rosner* to be their official supervisor for their permits. Dr. Nieves was not entitled to rely upon their separately sought and personally paid-for efforts to supplement the inadequacies of their official supervisor. For Dr. Nieves to have terminated supervision *immediately*, without prior notice to them and to the Board, following their expression of dismay at his underhanded conduct in obtaining the ERTC contract to the detriment of his own permit-holders, should be found in these circumstances to be improper retaliatory conduct. The impact of the immediate termination was exacerbated by Dr. Nieves' deliberate tying of their supervision to their employment by him (at 50% pay) at CPI.

(11) EXPLOITATION OF PERMIT-HOLDERS PROVIDING EAP SERVICES.

The ALJ would dismiss a charge of exploitation regarding the "FMC" EAP contract; ID 140 (Count 3). The ALJ saw no problem in respondents' being paid a $900/month retainer for the FMC contract, and requiring the permit-holders to see the FMC clients for the first 10 sessions at no charge (3T52). Thus, in order to be a CPI employee, the clinicians had to work for free while respondents received full payment which was not shared with the clinicians. Permit-holder Dr. Allen described respondents' financial dealings as "gross exploitation" (3T83; ID 70). No "outside" expert testimony is needed by the Board to find the damaging effect respondents knew or should have known that such conduct (especially that of Dr. Nieves) would have on young and inexperienced permit-holders and on the welfare of the profession.

(12) ADDITIONAL CONFLICT OF INTEREST BY BOTH RESPONDENTS IN HIRING DR. BLASUCCI'S SISTER WITHOUT DISCLOSURE TO DYFS.

An additional necessary finding of conflict of interest is the hiring by both respondents of Dr. Blasucci's sister Janice Vyzas as an "independent program evaluation consultant" for the T-A project (ID 50,51). Respondents could not dispute the witness testimony of this event, and the contract (C-129 EV) and other documents in evidence, which show conclusively that Vyzas was not identified as a relative (15T169-171). However, the ALJ appears to have inadvertently omitted making a specific finding on this specific conflict of interest while finding "convincing evidence" of the same type of violation as to the hiring of Dr. Nieves' daughter (ID 132). The Board should therefore correct that oversight and find both Dr. Nieves and Dr. Blasucci liable for hiring Ms Vyzas for the DYFS T-A program without disclosing their close family relationship.

In summary, the Board should find, based upon its professional expertise, that there is proof of multiple areas of unethical dealings - particularly by Dr. Nieves as a ruthless manipulator of

"the system" to his own financial advantage and to the psychological and financial detriment of others whom he uses and discards. The Board should find that the proofs demonstrate a lack of good character as to Dr. Nieves warranting a stronger disciplinary sanction that than recommended by the ALJ. License sanction and reimbursement should be assessed accordingly. The Board should affirm all violations already found as to Dr. Nieves (in Counts 1, 2 and 3) and as to Dr. Blasucci in Counts 1, 2, 3 and 4, and should find both respondents in violation of the same laws and rules with regard to the 12 Exceptions set forth herein: N.J.S.A. 45:14B-14, -24 and -28; N.J.S.A. 45:1-21(b),(c),(d),(e),(h).

PROPOSED DISCIPLINARY SANCTIONS

The Board should adopt the ALJ's recommendation that both respondents be responsible for all costs (Evidence Exhibits totalling $11,033). The Board should also order and make both respondents responsible for reimbursement of $1,542.23 to Dr. Jared Bush for his expenses on behalf of T-A. **As to Dr. Blasucci**, the Board should also adopt the ALJ's recommended revocation of Dr. Blasucci's license with assessment of $18,000 penalties, not only for the offenses already found by the ALJ, but inclusive also of each of the matters on which Exceptions were presented above. **As to Dr. Nieves**, the Board should modify the sanction on Dr. Nieves' license from the ALJ's proposed mere one-year suspension and should increase the sanction to a level commensurate with the serious offenses already found and those Exceptions proposed herein, with concommitant increase in the penalties from the proposed $13,500 to a higher level computed at the statutory rate.

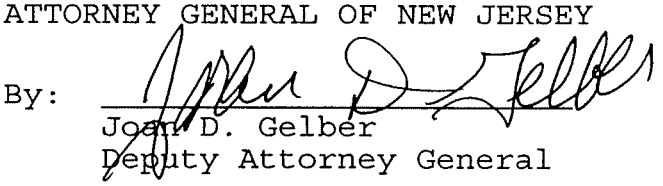
Since Board law does not authorize a permanent revocation of license per se, the Board Order should specify that if *either* respondent is ever again permitted to practice in this State, each should be required to successfully complete a Board-prescribed ethics course, and should be permanently prohibited from service as

a permit-holder's supervisor. Each respondent should be subject to three years of professional audits of his practice at his expense by Board-designated auditors, and should have to develop and enforce strict confidentiality policies for professional records including testing materials and information. Each should have to comply with Board conflict of interest policies on employees, and should not employ relatives without express prior Board permission. Each should have to maintain and publicize within his office a policy regarding sexual harassment.

This case illustrates the wide scope of responsibilities in the practice of professional psychology, including the critical areas of ethical responsibility to clients, to employees and colleagues, and to financial accountability. The Board's disciplinary response to the serious deficiencies of character manifested by both Drs. Nieves and Blasucci must send a strong message to deter others from similar conduct and to protect the public.

Respectfully submitted,

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: 
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ATTACHMENT A - TRIAL DATES, WITNESSES

1T	10/21/96	Wendy F. McKelvey Aita, Ph.D.
2T	10/22/96	Wendy F. McKelvey Aita, Ph.D., continued
3T	10/23/96	Mary Anne Rich
3T	10/23/96	Jeffrey B. Allen, Ph.D.
4T	10/28/96	Derek P. Aita, Psy.D.
4T	10/28/96	Karen Geller, Psy.D.
4T	10/28/96	Jared W. Bush, Ph.D.
5T	10/29/96	Jacqueline Gulla Decker
6T	11/19/96	Victoria A. Mason
6T	11/19/96	Karen L. Miller, Ph.D.
7T	11/20/96	Angela Heller Caracciolo
8T	11/21/96	Philip P. Frigerio
9T	11/25/96	Angela Heller Caracciolo, continued
9T	11/25/96	Frieda C. Rosner, Ph.D.
9T	11/25/96	Diane C. Carlson
10T	11/26/96	Linda Phillips
10T	11/26/96	Denise Tontarski
10T	11/26/96	Kathleen Wildenson, Ph.D.
11T	12/3/96	Luis Nieves, Ph.D., direct
11T	12/3/96	Kira Taissa Matko
11T	12/3/96	Linda Cameron, Ph.D.
12T	12/4/96	Luis Nieves, Psy.D., direct, continued
13T	12/5/96	Shabnum Sharma
13T	12/5/96	Raymond Pawson
13T	12/5/96	Wendy Matthews, Ph.D.
13T	12/5/96	Luis Nieves, Psy.D., direct, continued
14T	12/6/96	Margaret Rovner
14T	12/6/96	Gail Krebs
14T	12/6/96	Frederick Reinhardt
14T	12/6/96	Robert Fierick
14T	12/6/96	Luis Nieves, Psy.D., direct and cross
15T	12/9/96	John (Jack) Abbott
15T	12/9/96	Ms E[] S[]
15T	12/9/96	Ms T[] G[]
15T	12/9/96	Allen Blasucci, Psy.D., direct and cross
16T	12/11/96	(rebuttal Susan Anspacher)
16T	12/11/96	(rebuttal) Angela Heller Caracciolo